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JOSEPH F. SPANIOLO, JR.
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No. 89-388

IN THE SUPREME COURT
OF THE UNITED STATES

THE CITY OF NEW YORK, et al.,

Petitioners,

-against-

SEAWALL ASSOCIATES, et al.,

Respondents.

REPLY BRIEF

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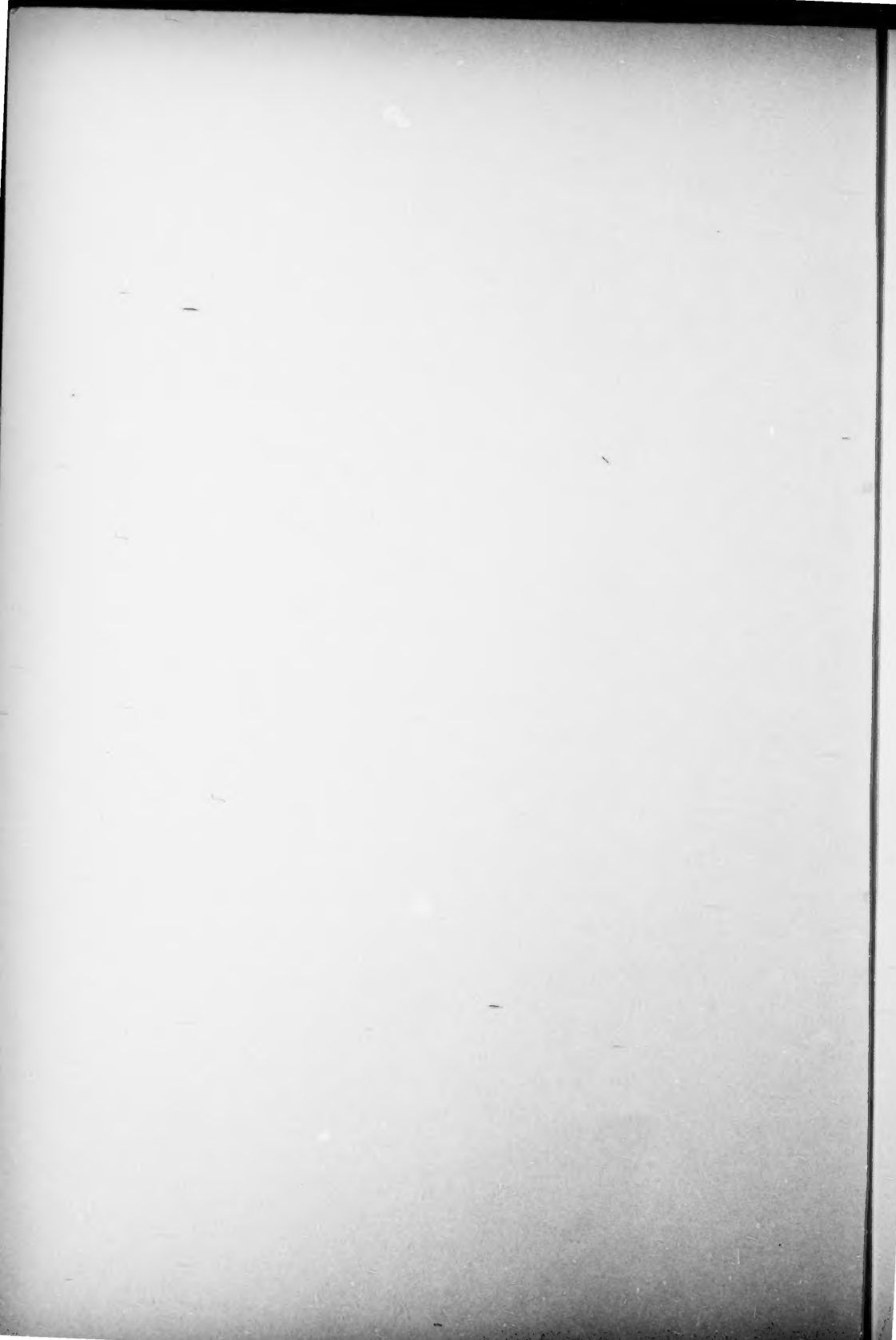


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THE DECISION BELOW IS NOT
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GROUND.

Respondents' categorical statement that the decision below rests on an adequate and independent state law ground is inaccurate. (Seawall Brief at 2-4, Sutton East Brief at 10-12). The decision below explicitly rests on federal law.

The decision constitutes the Court of Appeals' prediction of how this Court would resolve the constitutional issues presented in

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this challenge to New York City's SRO moratorium law. The Court of Appeals stated that it was resting its decision on federal law: "Although the Supreme Court has not passed on the specific issue of whether the loss of possessory interests . . . would constitute a per se taking, we believe that it would." (A-21).

Consistent with the Court of Appeals' reliance on federal law, the decision contains no analysis of the state law of takings. The state constitution is cited only three times and then only in conjunction with the parallel federal constitutional provision (A-3, 12, 63). State cases are cited only three times (A-23, 39, 59). In contrast, the lower court devotes the entire decision to an analysis of the federal cases takings clause with an emphasis on the recent takings decisions by this Court (A-16-29, 29-32, 34-52, 57-63).

Underscoring the lower Court's exclusive reliance on federal law is the fact that the Court withheld a "plain statement" that federal law did not compel its result. See Michigan v. Long, 463 U.S. 1032, 1041 (1983). The Court stated that it was not deciding the question of whether it would reach the same result under state law: "In view of this holding, we need not decide the extent to which, if at all, the protections of the "taking clause" of the New York State Constitution differ from those under the Federal Constitution." (A-63). In these circumstances, this Court has jurisdiction to hear this case and respondents' claim to the contrary is meritless. Asarco, Inc. v. Kadish, 109 S. Ct. 2037, 2049 (1989); Michigan v. Long, 463 U.S. at 1040-41 (1983).

CONCLUSION

**THE PETITION FOR A WRIT OF
CERTIORARI SHOULD BE
GRANTED.**

Respectfully submitted,

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City Petitioners.**

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